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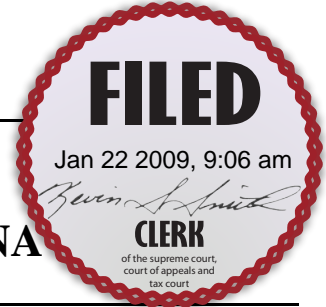
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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF THE TERMINATION )  
OF THE PARENT CHILD RELATIONSHIP OF )  
S.S. AND St.S. )

and )

STEFAN SEAY, )

Appellant-Respondent, )

vs. )

JEFFERSON COUNTY DEPARTMENT OF )  
CHILD SERVICES, )

Appellee-Petitioner. )

No. 39A01-0807-JV-315

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APPEAL FROM THE JEFFERSON CIRCUIT COURT  
The Honorable Ted R. Todd, Judge  
Cause No. 39C01-0703-JT-4

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**January 22, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## **Case Summary**

Stefan Seay appeals the juvenile court's order terminating his parental rights to his children, S.S. and St.S. We affirm.

## **Issues**

- I. Is the termination order clearly erroneous?
- II. Did the juvenile court err in denying Seay's motion to dismiss the petition to terminate his parental rights and his objection to the termination hearing?

## **Facts and Procedural History**

Pursuant to the request of the Jefferson County Department of Child Services ("the Department"), the juvenile court entered the following findings of fact and conclusions thereon in its termination order dated March 19, 2008:

1. Christina Galbreath is the mother and Stefan Seay is the father of [S.S.], born July 23, 2000 and of [St.S.], born March 28, 1998.
2. On October 14, 2004, ... [S.S. and St.S.], along with their half-siblings [Z.G.], and [M.G.] (they all share a common mother and [St.S. and S.S.] also share a common father) were all made Children in Need of Services (CHINS).
3. At the time all of the children were living with Christina.
4. [S.S. and St.S.] had been placed at the Jefferson County Youth Shelter (now Pathways) on August 16, 2004 when the Department assumed protective custody of the children due to several reports of either neglect or abuse of the children while in their mother's custody.
5. The girls remained at the shelter until January 15, 2005 when they went to live with Juanita and John Smith.
6. They stayed there until January 25, 2006 when they and their two half-brothers were reunited with their mother. Unfortunately, this turned out to be a short lived reunion.

7. On February 29, 2006 [S.S. and St.S.] were once again removed from Christina's home. They were placed at the Fresh Start Group Home in Madison until February 19, 2006.
8. On February 20, 2006 they were placed with foster parents Charles and Janice Lathrem where they stayed until May 18, 2006.
9. They were then placed with foster parents Juanita and John Smith.
10. On March 17, 2007 they were moved to the foster home of Tonya and Marco Prescher where they remained until February 14, 2008.
11. They now reside with foster parents in the Indianapolis area.
12. [On March 22, 2007, the Department filed a petition for the involuntary termination of Seay's and Christina's parental rights. On August 15, 2007, Christina consented to the termination of her rights. The juvenile court held a hearing on the petition on October 1 and 2, 2007.] The Petition filed in this case alleges that, "the children have been removed from the children's parents and have been under the supervision [of] the Jefferson County Department of Child Services for at least 15 of the last twenty two (22) months." That statement is incorrect.
13. Stefan was not, and never had been, the custodial parent of the children. They were removed from the custody of Christina.
14. The Department's Case Narrative Summary filed with this Court on February 22, 2005 states that Stefan had expressed an interest in having the children in his care.
15. It was learned through a drug screen that Mr. Seay was continuing to use cocaine and marijuana.
16. Because of Stefan's drug problems and criminal history, and his inability to show serious interest in caring for his two daughters[,], the Department has never seriously considered ... Stefan as a potential custodial parent.
17. The focus of the [D]epartment was, in the beginning, focused on attempting to reunite the four siblings with their mother.

....

21. Mr. Seay's role as a father has been limited in part by actions of his own doing. He has been incarcerated for much of the time since the children were born.

22. He was incarcerated from January 10 through June 23, 2006, and again since January 27, 2007.

23. On January 15, 2008 Mr. Seay was sentenced to ten years imprisonment for Dealing in Cocaine, a Class B Felony, with one year suspended. He was given credit for 355 days incarceration prior to sentencing.

24. In the over six months he was not incarcerated in 2006 and 2007 he saw his daughters only sporadically, and did not provide meaningful support for them in spite of being employed during part of that period.

25. The law allows this Court to terminate parental rights if certain statutory conditions have been shown to exist by, "clear and convincing evidence." See Indiana Code 31-19-9-8, specifically 31-19-9-8(a) (11) (A).

26. The Court has been provided with numerous cases where the Indiana Court of Appeals has affirmed involuntary termination of a father's parental rights where the father has a history of criminal activity and long term incarceration. See, e.g., Castro v Indiana Office of Family and Children 842 NE2d 367 (Ind App 2006); Hancock v Clay County Division of Family and Children 806 NE2d 847 (Ind App 2004); Wagner v Grant County Department of Public Welfare 653 NE2d 531 (Ind App 19[9]5).

27. Those cases are not in themselves dispos[i]tive. The Court also has here to consider the age of the children.

28. [St.S.] is now almost ten years old, [S.S.] is seven. Both children are bonded with their father in spite of his absence from their home.

29. Both children are old enough to know him as their father, thus making adoption problematical absent an open adoption, given their age and given the fact that all concerned have expressed an interest in the children being placed in the same home should adoption occur. Those factors must also be considered by the Court.

30. While the law speaks to abandonment, the pole star of any action involving children must be the best interest of the child.

31. Having weighed these factors and the test to apply, the Court finds that the Department has met its burden by clear and convincing evidence in this case. The law is with the Petitioner.

IT IS THEREFORE CONSIDERED, ORDERED, AND ADJUDGED by the Court that the parental rights of Christina Galbreath as mother and Stefan[] Seay as father of [S.S.], born July 23, 2000 and [St.S.], born March 28, 1998 are hereby terminated.

Appellant's App. at 48-53 (footnote omitted). Seay now appeals.

## **Discussion and Decision**

### ***I. Termination Order***

Seay claims that the juvenile court erred in terminating his parental rights. Our standard of review is well established:

This court has long applied a highly deferential standard of review in cases concerning the termination of parental rights. Thus, when reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. Moreover, in deference to the juvenile court's unique position to assess the evidence, we will set aside the court's judgment terminating a parent-child relationship only if it is clearly erroneous. If the evidence and inferences support the juvenile court's decision, we must affirm.

Here, the juvenile court made specific findings and conclusions thereon in its order terminating [Seay's] parental rights. Where the court enters specific findings and conclusions thereon, we apply a two-tiered standard of review. First, we determine whether the evidence supports the findings, and second we determine whether the findings support the judgment. Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference....

[T]he traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution. However, the juvenile court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities.

*In re L.B.*, 889 N.E.2d 326, 336 (Ind. Ct. App. 2008) (citations and quotation marks omitted).

To terminate a parent-child relationship, the Department is required to allege that

(A) one (1) of the following exists:

- (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
- (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
- (iii) the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(B) there is a reasonable probability that:

- (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
- (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(B)(2). The Department must establish each of these allegations by clear and convincing evidence. *In re A.B.*, 887 N.E.2d 158, 164 (Ind. Ct. App. 2008).

Seay does not specifically challenge any of the juvenile court's findings.<sup>1</sup> His argument is essentially this: "the [juvenile] court found that the children were bonded to Seay and there was clear and convincing evidence to support that finding. The judgment of termination of Seay's parental rights was completely inconsistent with the finding of 'bonding.'" Appellant's Br. at 12. We disagree.

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<sup>1</sup> Seay does attempt to distinguish the cases cited in finding 26, but we need not address his argument on this point. Seay also states that the juvenile court "never made a finding that termination was in the best interests of the children." Appellant's Br. at 12. We believe that such a finding is implied in paragraphs 30 and 31 of the termination order.

Although S.S. and St.S. may have bonded with Seay, the fact remains that he has been incarcerated for most of their lives due to his chronic drug problems and was sentenced to another ten years of imprisonment in January 2008. When he was not incarcerated, he visited them only sporadically and failed to provide them with any meaningful support. Given these considerations, we cannot say that the juvenile court's decision to terminate Seay's parental rights is clearly erroneous. *See In re S.P.H.*, 806 N.E.2d 874, 883 (Ind. Ct. App. 2004) (affirming termination of parental rights where father was incarcerated throughout CHINS and termination proceedings; "[E]ven assuming that [father] will be released in two or three years, he will have missed a significant part of [his children's] developmental years. During this time, [father] will not be able to provide financially for the children. Upon his eventual release from prison, there will be no guarantee that he will be able to care for his children or that he would ever get custody of them. Consequently, we find the needs of the children to be too substantial to force them to wait while determining if [father] would be able to be a parent for them.").

## ***II. Denial of Motion to Dismiss Petition and Objection to Termination Hearing***

On August 15, 2007, Seay filed a motion to dismiss the Department's termination petition. On October 1, 2007, he filed an objection to the termination hearing. On that date, the juvenile court heard arguments on the motion and the objection and took matters under advisement until the close of evidence in the termination hearing. The court did not issue a separate ruling on either the motion or the objection but effectively denied them via the

termination order. On appeal, Seay claims that the trial court erred in doing so. Again, we disagree.

Seay's motion to dismiss the termination petition was premised on his assertion that the statutory requirements for terminating his parental rights had not been met; we have already determined otherwise. Seay's objection to the termination hearing was based on his contention that the Jefferson County sheriff had refused to allow his children to visit him in jail for security reasons and that his incarceration had "not allowed his children to demonstrate to the [Department] that the parental child bond [should] continue." Appellant's App. at 31. On appeal, Seay reframes this argument as follows:

the [Department] did not make a reasonable effort during this period of time to accomplish any type of reunification with the father. The termination hearing and the resulting termination order should not have taken place without giving Seay an opportunity to prove through additional bonding with his children that termination of his parental rights was inappropriate.

Appellant's Br. at 16; *see also* Ind. Code § 31-34-21-5.5(b) (requiring Department to "make reasonable efforts to preserve and reunify families as follows: ... (2) If a child has been removed from the child's home, to make it possible for the child to return safely to the child's home as soon as possible." ).<sup>2</sup>

We agree with the Department that although it is

required to make reasonable efforts to preserve and reunify families, Seay never put himself in a position which would make placement of the Children with him a viable option, no matter what services were provided to him. He never had a home for the children. He never had a job that would support him,

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<sup>2</sup> Indiana Code Section 31-34-21-5.6 provides that a juvenile court may make a finding that reasonable efforts to reunify a child with the child's parent are not required. Seay points out that the juvenile court did not make such a finding in this case.

let alone his two daughters. When he was not incarcerated, he did not establish any semblance of a regular visitation schedule with the Children. And he never addressed the basic problem: drugs.

Appellee's Br. at 16; *see also In re E.E.*, 736 N.E.2d 791, 796 (Ind. Ct. App. 2000) (“[T]he provision of family services is not a requisite element of our parental rights termination statute, and thus, even a complete failure to provide services would not serve to negate a necessary element of the termination statute and require reversal.”); *Matter of A.C.B.*, 598 N.E.2d 570, 572 (Ind. Ct. App. 1992) (“Individuals who pursue criminal activity run the risk of being denied the opportunity to develop positive and meaningful relationships with their children.”). Based on the foregoing, we find no error in the juvenile court's denial of Seay's objection to the termination hearing.

Affirmed.

ROBB, J., and BROWN, J., concur.